IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.Rev.Pet.No. 1803 of 2002-A

ST.79/1993 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA
CRA.13/1995 of

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REVN. PETITIONER:

SANTHOSH KUMAR, ANAPARAKKAL KIZHAKKETTIL HOUSE, PALLAD MURI, KOIPURAM VILLAGE.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

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1. T.V.THOMAS, THOLUPARAMBIL HOUSE, THAKKEMALA MURI, PULLAD, KOIPURAM VILLAGE.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESH KUMAR
BY PUBLIC PROSECUTORMR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON 25/5/2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 9609 OF 2002 IN CRL.R.P.NO. 1803 OF 2002

DISMISSED.

25-5-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.1803 OF 2002

DATED THIS THE 24TH DAY OF MAY 2007

ORDER

The revision petitioner, who is the accused in S.T.No.79/1993 with respect to the offence under Section 138 of the Negotiable Instruments Act, stands convicted and sentenced to pay a fine of Rs.80,000/- and in default to undergo simple imprisonment for three months and that out of the fine amount, Rs.75,000/- is to be paid to the complainant as compensation. The case of the complainant is that the accused borrowed Rs.75,000/- and subsequently issued the cheque for the same amount drawn on Kareelamukku Branch of District Co-Operative Bank, Pathanamthitta which when presented got dishonoured for want of funds in the account of the accused. Notice demanding payment was sent but no payment was made. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3, Exts.P1 to P9 and Dws.1 to 3 and Exts.D1 to D4.

2. Ext.P1 is the disputed cheque. The accused has denied the signature contained therein. The accused did not testify. Of

course, he is not bound to do so. PW2 is the complainant who has testified with respect to the transaction involved. He has also got produced Ext.P4, the true extract of the ledger folio of his account that would show that he had withdrawn a sum of Rs.1,15,000/-on 16-4-1993. It is his version that it was on the above date,i.e. on 16-4-1993 that a sum of Rs.75,000/- was paid to the accused. According to him, the accused promised to pay back the amount within two days and on 26-4-1993, Ext.P1 cheque for Rs.75,000/- was issued. The Bank Managers were examined and it is established that there was no sufficient funds in the account of the accused. So far as the signature is concerned, the courts below have verified the same and found that the same tallied with the other admitted signatures of the accused. Further more, as pointed out by the courts below the accused did not take any initiative to send the cheque for expert opinion although the services of the expert was availed to examine another document in the present matter. On a verification of Ext.P1 and the related documents, I am inclined to agree with the views expressed by the courts below in this

regard.

3. It is the contention of the revision petitioner/accused that in early 1992 he had lost certain cheque leaves at Zion Hotel, Kozhencherry and that Sri. C.N.Gangadharan, Chennamkuzhy House happened to obtain the above cheque leaves and that one of such cheque leaves has been given to the complainant herein. Further more, the above Gangadharan had filed a complaint before the Circle Inspector alleging that the accused had received Rs.1,10,000/- after giving him cheques for different amounts. The complaint was filed on 20-8-1993. The above complaint was summoned and marked as Ext.D3. In the complaint mention is made of two cheque leaves and the number of the cheques. The same was sent for expert opinion to ascertain the last digit of the number of one of the cheques. The last digit was found to have been smeared with the ink of carbon and the digit is not legible. Ext.P1 cheque leaf Number is 138588. The rest of the numbers in Ext.D3 tally with the impugned cheque leaf. The same was sent for expert opinion to the F.S.L.Thiruvananthapuram. Ext.D4 is the report of the

expert and DW3 is the Expert who is the Joint Director, F.S.L. Thiruvananthapuram. It is the evidence of DW3 that the last digit in Ext.D3 is in fact 7. The above version would disprove the contention of the revision petitioner that Ext.P1 cheque is having the cheque Number mentioned in Ext.D3. Further more, as pointed out by the courts below, Ext.D3 complaint is dated 20-8-1993. The complaint under Section 138 of the N.I.Act was filed on 11-6-1993. The above fact also disprove the version of the accused that it is the cheque leaf picked up by Sri. C.N.Gangadharan that has been presented by the complainant herein. Further more, it is hard to believe the story of losing the cheque leaf and another person collecting the same and getting it presented through a different person. I find no reason to interfere in the findings of the courts below. The conviction and sentence is confirmed. The revision petition is dismissed.

Sd/-
K.R.UDAYABHANU, JUDGE

ks. **TRUE COPY**

P.S.TO JUDGE

K.R.UDAYABHANU, J

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CRL.R.P.NO.1803 of 2002-A

ORDER

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25-05-2007

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